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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,665	12/28/2000	Jean-Claude Yvin	16721-0023	9528

7590 09/24/2002  
Jones & Askew  
2400 Monarch Tower  
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EXAMINER

HENLEY III, RAYMOND J

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 09/24/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/601,665

Applicant(s)  
Jean-Claude Yvin, et al.

Examiner  
Ray Henley

Art Unit  
1614



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-10 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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**CLAIMS 1-10 ARE PRESENTED FOR EXAMINATION**

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Applicants' Information Disclosure Statement filed March 22, 2000 has been received and entered into the application. As reflected by the attached, completed copy of form PTO-1449, the cited references have been considered.

***Specification***

***I*** This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

***II*** A substitute specification including the claims is required pursuant to 37 CFR 1.125(a) because as filed, the reproductive quality of the present specification is poor and numerous letter characters are hazy, incomplete, missing, illegible and/or too light in intensity.

A substitute specification filed under 37 CFR 1.125(a) must only contain subject matter from the original specification and any previously entered amendment under 37 CFR 1.121. If the substitute specification contains additional subject matter not of record, the substitute specification must be filed under 37 CFR 1.125(b) and must be accompanied by: 1) a statement that the substitute specification contains no new matter; and 2) a marked-up copy showing the amendments to be made via the substitute specification relative to the specification at the time the substitute specification is filed.

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**III** The specification does not contain a section entitled "Brief Description of the Drawings" and an appropriate paragraph wherein the drawings are briefly described (MPEP 608.01(f)).

Appropriate correction is required.

### ***Claim Objections***

**I** Claims 1-10 are objected to because, as noted above, the reproductive quality of the present specification is poor and numerous letter characters are hazy, incomplete, missing, illegible and/or too light in intensity.

**II** Claim 7 is objected to under 37 CFR 1.75© as being in improper form because a multiple dependent claim must depend from other claims in the alternative form only. See MPEP § 608.01(n). Accordingly, this claim has not been further treated on the merits.

**III** Also, applicants should revise the present claim language such that it is in proper grammatical form. An example of such grammatical errors is in claim 1, line 1 "Medicine, characterized in that it comprises..", i.e., should read ---A medicine comprising.---

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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Claims 8-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. See, for example, *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966) respecting the impropriety of claims reciting "Use of..." and their dependents.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**I** Claims 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim fails to particularly point out any steps to be performed to accomplish the preparation of a medicament.

**II** Claims 3 and 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The metes and bounds of the subject matter for which applicants seek patent protection is unclear from the expressions "with a view to preparing a medicine" (claims 8-10) and "...possibly comprising one or more sulfate groups" (claim 3).

**III** Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The expressions “Tillmans and Philippi” and “Zablakis and Perez” do not clearly convey any particular manner of testing/measuring.

IV Claims 1-3, 5 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by “such as” and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance,

(A) Claims 1 and 8 recite the broad recitation “sulfated galactans”, and the claims also recite “in particular carrageenans, agars and porphyrans” which is the narrower statement of the range/limitation; and

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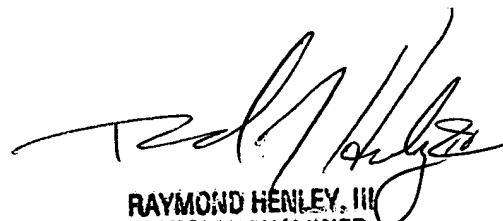
(B) Claims 2, 3 and 5 recite the broad recitation "from 1 to 50", and the claims also recite "preferably from 5 to 10" (claim 2), "from 1 to 20" (claim 3) and "from 20 to 30" (claim 5) which are narrower statements of the range/limitation.

✓ Claims 6 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6 and 10 recite the limitation "product I<sub>9</sub>". There is insufficient antecedent basis for this limitation in the claim.

Accordingly, for the reasons above, the claims are deemed to be properly rejected/objected to and none of the claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ray Henley whose telephone number is (703) 308-4652.



RAYMOND HENLEY, III  
PRIMARY EXAMINER  
GROUP 1200

Henley; rjh  
September 22, 2002